

Application No. 10/585,773
Amendment Dated July 23, 2010
Reply to Office Action of May 11, 2010

REMARKS

The Office Action mailed May 11, 2010 has been carefully considered by Applicant. Reconsideration is respectfully requested in view of the foregoing claim amendments and the remarks that follow.

Allowed Claims

Claims 19-26 are allowed.

Claim Amendments

Claim 10 is amended to correct a typographical error.

Claim 27 is amended to further define the cut-outs.

Claim Rejections

Claims 10-12, 14-15, 17 and 27-28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Halaunbrenner U.S. Patent No. 3,824,957 in view of Wishner U.S. Patent No. 4,007,709.

In the rejection of claim 27, the Examiner states:

...it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the conduit of Halaunbrenner with the cut-outs as taught by Wishner in order to have better water and air flow.

In the Response to Arguments section of the Office Action, the Examiner states:

In response to applicant's arguments that Halaunbrenner does not disclose a cut-out formed radially into the conduit member, this argument is persuasive. The Examiner uses the Wishner reference as a teaching for making openings in the conduit member as described in the above rejection of claim 27.

The claim rejections are respectfully, yet strongly traversed. The Examiner is unfairly utilizing hindsight to reject the claims. Neither Halaunbrenner nor Wishner relates

whatsoever to a device for promoting emigration of crustacean onto a seabed. Rather both of the references cited by the Examiner are specifically intended to retain developing sea life. The Examiner's suggestion that it would have been obvious to add the claimed *radially formed cut-out* to the arrangement of Halaunbrenner is contrived and technically incorrect.

Halaunbrenner was focused on collecting spat and retaining them so as to ensure satisfactory development. See column 1, lines 19-20. Once the spat is properly developed, separation is promoted by twisting and tapping plates 19. See column 4, lines 23-28. Adding radially formed cut-outs to the apparatus of Halaunbrenner (to "have better water and air flow" as proposed by the Examiner) would not only require a significant structural modification, but would also require a modification of the entire purpose of Halaunbrenner, namely to retain the spat. Adding cut-outs to the central member of Halunbrenner would allow for emigration of the spat, which according to Halunbrenner is undesirable. This cuts directly against the Examiner's indication of what would have been obvious in the art.

In addition, as stated in the Applicant's previous response, the central member of Halaunbrenner is filled with sand to serve as a weight when it is desired to immerse the collector in the water. See column 2, lines 34-39. Alternately it serves as a float (by presumably remaining sealed and filled with air or some other buoyant material) when the collector is intended to float. See column 2, lines 36-39. In each of these instances it would be counterproductive to the objects of Halunbrenner to add holes in the central member, as proposed by the Examiner. One skilled in the art simply would not have been motivated to make this change and the reason given by the Examiner for doing so is technically unsupported.

Wishner relates to an apparatus and a process for raising lobsters from post-larva size to at least a size at which they are suitable for marketing. See column 1, lines 4-6. Wishner solves the problem of how to keep the lobsters contained separately within the device until they can be sold. See column 1, line 10. Again, this is fundamentally the opposite of the present invention, wherein the objective was to allow for emigration of lobsters. This further proves that one skilled in the art would never have looked to Wishner to devise a solution on how to modify Halaunbrenner to release or allow lobsters to migrate onto a seabed.

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Claim 27 has also been further amended to define patentable subject matter over the prior art. Specifically, the *first cut-out* and the *second cut-out* are now defined as being *sized large enough to permit said migration of crustacean therethrough*. This structure is not found in either of the references cited by the Examiner. Halaunbrenner does not disclose cut-outs. Wishner does not disclose cut-outs that are sized large enough to permit migration of crustacean. On the contrary, Wisher specifically states: "**All holes 17, 17a are too small for the post-larval lobsters to pass therethrough**" See column 2, lines 65-67. This is because Wishner specifically had the objective of retaining the lobsters within its apparatus.

Claim 27 is therefore believed allowable over the prior art. Such action is respectfully requested.

Claims 10-12, 14-15, 17 and 28

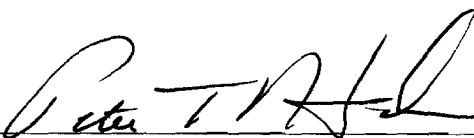
Claims 10-12, 14-15, 17 and 28 depend directly or indirectly from claim 27 and are therefore allowable for at least the reasons stated above, as well as the subject matter recited therein.

Conclusion

The present application is thus believed in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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